

AG Contract No.: KR04-0555TRN
ADOT ECS File No.: JPA 04-048
Project No.: HRF-AAP-0-803
Project: Concho / Snowflake Highway
TRACS No.: HF103 01C
Budget Source Item No.: N/A
HURF Exchange Program

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
APACHE COUNTY

THIS AGREEMENT is entered into 3rd June, 2004, pursuant to Arizona Revised Statutes § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and APACHE COUNTY, ARIZONA, acting by and through its Board of Supervisors (the "County").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-6993(g) to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The County is empowered by Arizona Revised Statutes § 11-251 and § 11-951 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County.

3. The State has approved the exchange of \$419,000.00 in Highway User Revenue Funds (HURF) in Fiscal Year 2004 to the County for the construction of roadway improvements to Concho Road / Snowflake Highway, and such funds will be repaid to the State by withholding from the Northern Arizona Council of Governments (NACOG) federal funds and the obligation authority for federal funds in the amount of \$434,638.00 in Fiscal Year 2004.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 26863
Filed with the Secretary of State
Date Filed: 06/03/04
Janice K. Brewer
Secretary of State
By: Timothy D. Guseenwald

II. SCOPE OF WORK

1. The County will:

a. Provide design plans, specifications and such other documents and services required for construction bidding and construction.

b. Call for bids and award one or more construction contracts for the project. Administer same, and make all payments to the contractor(s). Be responsible for any additional funds required to complete the project, and for any contractor claims for extra compensation due to delays or whatever reason. Comply with all applicable State laws, rules and regulations.

c. Invoice the State for thirty percent of the project construction cost, at the start of construction.

d. Invoice the State for thirty percent of the project construction cost, at the thirty percent and sixty percent project construction completion stages.

e. Upon completion, approve and accept the project as complete and provide maintenance. Provide the State with a letter documenting the notice of the approval and acceptance of the project.

f. Invoice the State for the remaining ten percent of the project construction cost at the one hundred percent project construction completion stage, after the County, NACOG, and the State (ADOT) representatives have completed final project review.

2. The State will:

a. Within 30 days after receipt and approval of an invoice, pay for thirty percent of the project construction cost at the start of construction, and for thirty percent of the project construction cost at the thirty percent project construction completion stage, and for thirty percent of the project construction cost at the sixty percent project construction completion stage, and pay ten percent upon completion of construction.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The County, in regard to the County's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. The County shall require its contractors to name the State and ADOT as an additional insured in the contractor's policies. The County shall also require its contractors to name the State and ADOT as an additional indemnitee in the County's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to advancing highway user revenue funds; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the County and that to the extent permitted by law, the County hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. This terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the County, the State shall in no way be obligated to maintain said project

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

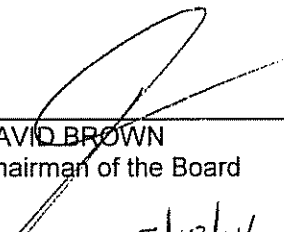
Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
FAX (602) 712-7424

Apache County
County Engineer
P.O. Box 238
St. John, Arizona 85936

10. Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.


IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

APACHE COUNTY

By 


DAVID BROWN
Chairman of the Board
Date 5/18/04

STATE OF ARIZONA
Department of Transportation

By 

DALE BUSKIRK, Division Director
Transportation Planning Division
Date 5/21/04

ATTEST

By 

DELWIN WENGERT
Deputy Clerk of the Board
Date 5/18/04

DAVID A. BROWN
CHAIRMAN OF THE BOARD
DISTRICT III
P.O. BOX 428, ST. JOHNS, AZ 85936

JIM CLAW
VICE CHAIR OF THE BOARD
DISTRICT I
P.O. BOX 1952, CHINLE, AZ 86503

TOM M. WHITE, JR.
MEMBER OF THE BOARD
DISTRICT II
P.O. BOX 994, GANADO, AZ 86505

**BOARD OF SUPERVISORS
OF APACHE COUNTY**

P.O. BOX 428
ST. JOHNS, ARIZONA 85936

TELEPHONE: (928) 337-4364
FACSIMILE: (928) 337-2003



DELWIN P. WENGERT, MANAGER-CLERK
P.O. BOX 428, ST. JOHNS, AZ 85936

CERTIFICATION OF MINUTES

"Ferrin Crosby, County Engineer, presented the request for authorization to enter into an Intergovernmental Agreement with the Arizona Department of Transportation for the purpose of exchanging federal dollars for HURF dollars. Mr. Crosby stated that this is a revolving fund that we receive on a four year basis through NACOG. Mr. Crosby stated that they exchange the dollars to the State at a small discount, but it allows the County to facilitate projects in a timely fashion. Mr. Claw motioned to approve. Mr. White asked Mr. Crosby for a broader explanation and Mr. Crosby explained the program more fully, Mr. White seconded the motion. Chairman Brown asked if there were any other comments or questions. Hearing no reply, vote was unanimous."

I, Delwin Wengert, Clerk of the Board of Supervisors, do hereby certify that the above is a true and correct copy of a paragraph of the minutes of a meeting of the Apache County Board of Supervisors held on May 18, 2004.

IN WITNESS WHEREOF, I have affixed the official seal of Apache County at St. Johns, the county seat this 19th day of May, 2004.

A handwritten signature in cursive script that reads "Delwin Wengert".

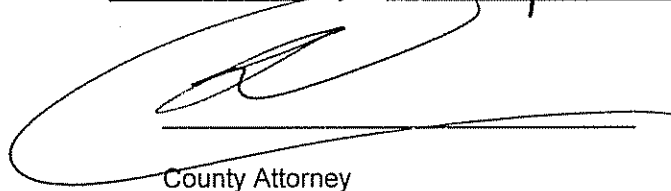
Delwin Wengert
Clerk/Manager

(SEAL)

APPROVAL OF THE APACHE COUNTY ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the APACHE COUNTY, an agreement among public agencies which, has been reviewed pursuant to A R S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the COUNTY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 18 day of May, 2004.

A large, stylized handwritten signature in black ink, consisting of a large loop on the left and a horizontal stroke extending to the right.

County Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-0555TRN (**JPA 04-048**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: May 26, 2004

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis", written over a horizontal line.

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section